

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
EDWARD CHARLES DIXON,) CASE NO. 05-68401 JPK
) Chapter 7
Debtor.)

EDWARD CHARLES DIXON,)
Plaintiff,)
v.) ADVERSARY NO. 06-6188
STACIE R. DIXON,)
Defendant.)

ORDER DENYING MOTION FOR DEFAULT JUDGMENT

On December 7, 2006, the plaintiff, by counsel, filed a Verified Application for Default Judgment. The record establishes that copies of the summons and complaint were properly served upon the defendant Stacie R. Dixon, and that the defendant failed to either appear in the action or respond to the complaint. On February 1, 2007, the Clerk entered an entry of default pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(b)(1).

The plaintiff's request for a judgment default must be denied for a number of reasons, which are as follows:

1. The complaint fails to invoke the Court's jurisdiction, due to failure to comply with the requirements regarding averments of jurisdiction established by Fed.R.Bankr.P. 7008(a)/ Fed.R.Civ.P. 8(a)(1). For this reason alone, it would be necessary for the plaintiff to amend the complaint.

2. The document by which this adversary proceeding was initiated is entitled "Debtor's Motion to Avoid Judicial Lien Per 11 U.S.C. § Section 522(F) and Complaint to Determine Dischargeability Per 11 U.S.C. § Section 523(A)(15)".¹ Thus, this action seeks to combine a matter which is to be presented to the Court by motion (actions under 11 U.S.C.

¹ The fact that the correct statutory citations are 11 U.S.C. § 522(f) and 11 U.S.C. § 523(a)(15) is not material.

§ 522(f) are contested matters within the parameters of Fed.R.Bankr.P. 9014) and a matter which requires the utilization of an adversary proceeding (actions under 11 U.S.C. § 523(a)(15) are within the requirements of Fed.R.Bankr.P. 7001(6)). The portion of the initial pleading which thus seeks to avoid a judicial lien is procedurally ineffective. Even if the Court were to somehow overlook this procedural deficiency, there is nothing in this record which establishes the requirements of 11 U.S.C. § 522(f)(2)(A), i.e., there is nothing in this record which establishes the value of the subject property; whether or not other liens exist with respect to the property and, if so, the date upon which those liens attached to the property and the amount of the indebtedness subject to those liens. The Court also parenthetically notes that it appears that Edward C. Dixon and Stacie R. Dixon owned the subject real estate as husband and wife, and therefore as tenants by the entirety. It appears that the parties were divorced, which by operation of Indiana law converted the tenancy by the entirety into a tenancy in common, with each of the parties owning an undivided one-half interest in the subject property, absent other provisions made in the decree of divorce. There is no copy of the divorce decree in this record, and thus apparently the plaintiff is seeking to avoid a judicial lien entered in the judgment of dissolution of marriage in favor of the defendant with respect to the plaintiff's remaining interest in the property.

3. The "complaint" portion of the initial pleading appears to seek a determination that an indebtedness stated in the parties' divorce decree is dischargeable by operation of 11 U.S.C. § 523(a)(15). This case presents the reverse of the ordinary § 523(a)(15) action in which the plaintiff seeks a determination that an indebtedness is excepted from discharge. This action therefore is more in the nature of a declaratory judgment action with respect to the dischargeability of a debt, provided for by Fed.R.Bankr.P. 7001(6) and (9) – if the jurisdictional averments of the complaint had properly invoked those sections. The record is entirely insufficient for the Court to determine the nature of the indebtedness to which the complaint is

directed, consisting as it does of random provisions from the parties' dissolution decree, as stated in paragraph 6 of the complaint. Paragraph 8 of the complaint indicates that the plaintiff apparently sought an order of clarification from the divorce court, and whatever reason there was for that request is not apparent from this record. Additionally, the recitation of the divorce court's order in paragraph 7 sheds no light at all on the nature of the indebtedness. The Court is unable to ascertain whether or not the indebtedness which is the subject of the complaint is within 11 U.S.C. § 523(a)(15) or within the provisions of 11 U.S.C. § 523(a)(5). If the latter, it is nondischargeable as a matter of law and the judicial lien with respect to it cannot be avoided [11 U.S.C. § 522(f)(1)(A)(i)]. Moreover, this Court will not characterize the nature of a debt determined by a state court dissolution decree: that is the state court's job. In fact, it can be argued that federal courts do not have any authority to construe state court divorce judgments for this purpose; See, Marshall v. Marshall, 126 S.Ct. 1735 (2006). The Court will say this: if the indebtedness which is the subject of this action is in fact within the provisions of 11 U.S.C. § 523(a)(15), it has been discharged because Stacie R. Dixon did not take the actions necessary under 11 U.S.C. § 523(c)(1) within the time frame required by Fed.R.Bankr.P. 4007(c) to determine the debt's exception from discharge.

There is also a vague request in the record that the Court issue an order which requires Stacie R. Dixon to quitclaim her interest in the subject property to the plaintiff. This Court has no jurisdiction to enforce a dissolution judgment entered by a state court.

We thus come to the following fork(s) in the road. To the extent the complaint seeks judicial lien avoidance pursuant to 11 U.S.C. § 522(f), that relief cannot be accorded in an adversary proceeding and must be made the subject of a separate motion. To the extent the indebtedness to which the judicial lien applies is within 11 U.S.C. § 523(a)(15), there is no need for any determination by this Court that the debt is dischargeable. If the debt is within the

provisions of 11 U.S.C. § 523(a)(5), not only is it excepted from discharge but any judicial lien existing with respect to it cannot be avoided. Finally, if there is uncertainty as to whether or not the debt is subject to § 523(a)(15) or to § 523(a)(5), that uncertainty will not be resolved by this Court. As a result, there is no issue sought to be presented in this adversary proceeding which can be made the subject of this adversary proceeding.

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff's Verified Application for Default Judgment filed on December 7, 2006 is denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this adversary proceeding is dismissed.

Dated at Hammond, Indiana on March 9, 2007.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Attorneys of Record